

because Inmarsat withdrew an application for a 2 GHz MSS license in 2000.<sup>166</sup> ICO and TMI also discount Globalstar's interest because it has previously lost a 2 GHz MSS license due to failure to meet its milestone obligations.<sup>167</sup> Inmarsat replies that the ORBIT Act precluded it from pursuing a 2 GHz MSS authorization until it privatized.<sup>168</sup> Inmarsat argues further that it needs spectrum in the 2 GHz MSS bands because the current MSS spectrum allocations in the L-band and the Big LEO bands may not be sufficient to allow continued growth of MSS services.<sup>169</sup> ICO asserts that Inmarsat already has access to sufficient spectrum.<sup>170</sup>

56. *Discussion.* We find no basis in the record to question whether Inmarsat's and Globalstar's expressions of interest in 2 GHz MSS spectrum are genuine.<sup>171</sup> However, we do not consider this to be relevant to our determination above that ICO and TMI need spectrum reservations of 10 megahertz of spectrum in each direction to be roughly comparable with the average spectrum assignment of their competitors in the market for mobile communications services. In particular, we find that the public interest weighs in favor of giving ICO and TMI the inputs needed to enable them to become strong MSS competitors more than it does allowing other existing service providers to expand their existing services.

### C. Incentives for Rapid System Implementation

57. Globalstar argues that inviting new entrants into the 2 GHz MSS band in a modified processing round would increase the incentives for ICO and TMI to build their systems quickly.<sup>172</sup> Both ICO's and TMI's spectrum reservations include milestone requirements, under which they will lose their rights to provide service in the United States if they do not construct their satellite systems in a timely manner. Increasing ICO's and TMI's spectrum reservations does not affect their milestone requirements. Therefore, we find that no further incentives are warranted here.<sup>173</sup>

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<sup>166</sup> TMI Second Reply at 5-7; ICO Second Reply at 7; Sirius Second Reply at 5-6.

<sup>167</sup> ICO Second Reply at 7; TMI Second Reply at 8-9.

<sup>168</sup> Inmarsat Second Reply at 24-25.

<sup>169</sup> Inmarsat First Comments at 10-12; Inmarsat Second Comments, Exh. A at 9-12; Inmarsat Second Reply at 25-29. *See also* Globalstar Second Comments at 3-5.

<sup>170</sup> ICO Second Comments at 12-14; ICO Second Reply at 6-7.

<sup>171</sup> We also note that Inmarsat has filed a petition for declaratory ruling to provide satellite service in the United States in the 2 GHz MSS band. In a separate Order released today, the International Bureau dismisses Inmarsat's petition.

<sup>172</sup> Globalstar Second Reply at 13-14.

<sup>173</sup> Skyterra states that, if the Commission started a modified processing round, spectrum would not be put into use until four to six years after new licenses are issued. Skyterra Second Reply at 9-10. Inmarsat disagrees. Inmarsat Second Reply at 34-35. Although bringing satellite spectrum into use as quickly as possible is an important policy goal of the Commission, that goal would not outweigh giving new market entrants an opportunity to enter the market if a modified processing round were warranted here. Therefore, we place no weight on Skyterra's assertion.

#### D. Inmarsat Proposal

58. *Background.* Inmarsat recommends a comprehensive review of the 2 GHz MSS band to develop a record on commonly used channelization schemes. The Commission would be required to determine the optimal amount of spectrum for each 2 GHz MSS system, and thereby determine the optimal number of 2 GHz MSS system operators to permit in the frequency band.<sup>174</sup> Skyterra responds that the comprehensive review suggested by Inmarsat would result in a protracted regulatory proceeding.<sup>175</sup>

59. *Discussion.* We decline to adopt Inmarsat's proposal. The analysis that Inmarsat recommends is inherently subjective, and Inmarsat does not suggest any method to make its proposed analysis more objective. Therefore, we agree with Skyterra that Inmarsat's proposal would result in a protracted regulatory proceeding.

60. In addition, the Commission has been reluctant to base spectrum assignments for NGSO-like satellite systems on a determination of the spectrum needed by a specific satellite operator to provide a particular service.<sup>176</sup> Given the innovative designs and unique markets targeted by each operator, we generally do not attempt to evaluate each licensee's individual spectrum needs.<sup>177</sup> Rather, we prefer to leave these evaluations to the marketplace. This is why the Commission has historically required mutually exclusive NGSO satellite system applicants to forge mutually agreeable spectrum-sharing plans rather than mandating a Commission-devised solution based on each applicant's perceived or argued needs.<sup>178</sup> The Commission's use of this approach in the past resulted in a process that was too unwieldy given the increasing complexity of NGSO satellites and international rules decreasing the amount of time licensees are given to bring the proposed systems into use. Thus, we decided simply to divide the available spectrum by the number of qualified applicants. The Commission found that this market-based approach would be more likely to result in the best spectrum assignments than detailed regulatory scrutiny of individualized spectrum needs.<sup>179</sup> Because Inmarsat's proposal would require us to reverse this policy and make individualized spectrum evaluations with respect to 2 GHz MSS systems, we do not adopt Inmarsat's proposal.

### VII. OTHER ISSUES

#### A. Auction

61. *Background.* Intel asserts that the "first best" solution is to auction flexible use licenses for the spectrum, and calls on Congress to repeal the part of the ORBIT Act that

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<sup>174</sup> Inmarsat Second Comments, Exh. A at 27-29; Inmarsat Second Reply at 11-13; *August 24 Inmarsat Letter*.

<sup>175</sup> Skyterra Second Reply at 9.

<sup>176</sup> *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10776 (para. 29).

<sup>177</sup> *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10776 (para. 29).

<sup>178</sup> *Big LEO Order*, 9 FCC Rcd 5936; *Little LEO Second Processing Round Order*, 13 FCC Rcd 9111.

<sup>179</sup> *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10776 (para. 29).

precludes auctions for international and global satellite services.<sup>180</sup> Similarly, CTIA contends that there is no basis for concluding that ICO and TMI would use their additional spectrum for the benefit of the public unless they obtain their spectrum rights in an auction.<sup>181</sup> CTIA argues that the spectrum at issue should be subject to auction because such an auction would be likely to generate a great deal of revenue.<sup>182</sup> Finally, CTIA and Cingular argue that, to the extent that 2 GHz MSS operators seek additional spectrum to provide ATC, the spectrum should be auctioned.<sup>183</sup>

62. *Discussion.* We will not conduct an auction for the newly available 2 GHz MSS spectrum at issue here. As several parties note, auctions of MSS spectrum licenses are not permitted under the ORBIT Act,<sup>184</sup> and we have decided not to reallocate the spectrum at issue for non-MSS use. In addition, we have decided for the reasons discussed above to reassign the spectrum to ICO and TMI rather than to consider new applications for this spectrum. As a result, even if auctions of MSS licenses were permitted, there is no possibility here of the filing of mutually exclusive applications, a prerequisite for auctions under Section 309(j)(1).<sup>185</sup> Finally, although TMI notes that the Commission's auction authority precludes the Commission from basing a public interest finding on potential auction revenues,<sup>186</sup> this point is irrelevant here because we have decided not to reallocate the spectrum.

## B. Globalstar Application for Review

63. Globalstar, whose 2 GHz MSS license was cancelled by the International Bureau for failing to meet its first milestone,<sup>187</sup> opposes any reassignment or reallocation of 2 GHz MSS spectrum before the Commission acts on its petition for reconsideration of the Order affirming the cancellation of its license.<sup>188</sup> ICO and TMI respond that any spectrum reassignment to them

<sup>180</sup> Intel First Reply at 5; Intel Second Comments at 3-5.

<sup>181</sup> CTIA First Comments at 5-6.

<sup>182</sup> CTIA First Comments at 3-4. *See also* Intel First Reply at 9-11 (estimating that an auction would generate a great deal of revenue, and asserting that this warrants reallocating 2 GHz MSS spectrum to terrestrial wireless services).

<sup>183</sup> CTIA First Comments at 5; CTIA First Reply at 3-4; Cingular First Reply at 5-6; Cingular Second Comments at 5-6.

<sup>184</sup> Globalstar Second Comments at 8-9; Sirius Second Comments at 13; TMI Second Reply at 33. *See also* Section 647 of the Communications Satellite Act, as amended by Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act), 47 U.S.C. § 765f.

<sup>185</sup> 47 U.S.C. § 309(j)(1). *See also* ATC Order, 18 FCC Rcd at 2068-69 (para. 221) (concluding that the decision to modify MSS operators' rights under their existing authorizations, and to decline to allow terrestrial operations separate from MSS operations in bands used by MSS operators, precluded the possibility of mutually exclusive applications).

<sup>186</sup> TMI Second Reply at 16-17, *citing* 47 U.S.C. § 309(j)(7)(A).

<sup>187</sup> Globalstar, L.P., *Memorandum Opinion and Order*, 18 FCC Rcd 1249 (Int'l Bur. 2003) (*Globalstar Milestone Order*), *aff'd*, 19 FCC Rcd 11548 (2004).

<sup>188</sup> June 20 Globalstar Letter at 1-3; Globalstar First Comments, *passim*.

could be made subject to the outcome of Globalstar's petition for reconsideration.<sup>189</sup> We agree, and will condition our modifications of ICO's and TMI's spectrum reservations accordingly. We will address Globalstar's substantive concerns in the context of its petition for reconsideration.

### VIII. ADMINISTRATIVE MATTERS

64. Accordingly, we modify ICO's and TMI's reservations of spectrum in the 2 GHz bands to provide Mobile-Satellite Service (MSS), consistent with Section 316 of the Communications Act, for the reasons set forth in this Order above. ICO and TMI currently each have spectrum reservations of 4 megahertz in the 2000-2020 MHz band, and 4 megahertz in the 2180-2200 MHz band.<sup>190</sup> We increase ICO's and TMI's spectrum reservation by 6 megahertz in each band, by reassigning the spectrum made available by Iridium's, Boeing's, and Celsat's license surrenders. As a result, ICO and TMI each have a total of 10 megahertz in each direction.

### IX. ORDERING CLAUSES

65. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and Sections 1.2 and 25.137 of the Commission's rules, 47 C.F.R. §§ 1.2, 25.137, this Order IS ADOPTED.

66. IT IS FURTHER ORDERED that the action taken in paragraph 32 of the *ICO Authorization Order*,<sup>191</sup> as modified by the *First ICO Bandwidth Adjustment Order*,<sup>192</sup> and the *ICO Modification Order*,<sup>193</sup> IS FURTHER MODIFIED to read as follows:

\* \* \* ICO Satellite Services G.P. IS RESERVED radio-frequency spectrum for a single geostationary-satellite-orbit satellite to operate at 91° W.L. in the 2000-2020/2180-2200 MHz frequency bands in the United States, in accordance with the technical specifications set forth in its application, the conditions set forth the terms and conditions set forth in the Order, 16 FCC Rcd 13762 (Int'l Bur. and OET, 2001), and consistent with our rules, unless specifically waived, and subject to the following conditions:

- (a) ICO Satellite Services, G.P. shall choose a Selected Assignment in each of the 2000-2020 MHz and 2180-2200 MHz frequency bands upon commencing operation of a 2 GHz MSS satellite in its authorized orbit location;

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<sup>189</sup> ICO First Reply at 13; TMI First Reply at 21-22.

<sup>190</sup> See, e.g., ICO Satellite Services G.P., *Order*, 18 FCC Rcd 12339 (Int'l Bur., 2003) (*First ICO Bandwidth Adjustment Order*); TMI *Reinstatement Order*, 19 FCC Rcd at 12623 (para. 60).

<sup>191</sup> *ICO Authorization Order*, 16 FCC Rcd at 13775 (para. 32).

<sup>192</sup> *First ICO Bandwidth Adjustment Order*, 18 FCC Rcd at 12340-41 (para. 4).

<sup>193</sup> ICO Satellite Services G.P., *Application for Modification of 2 GHz LOI Authorization, Memorandum Opinion and Order*, 20 FCC Rcd 9797 (Int'l Bur., 2005) (*ICO Modification Order*).

- (b) The Selected Assignments will give ICO Satellite Services, G.P. access to 10 megahertz of contiguous spectrum in each direction of transmission on a primary basis;<sup>194</sup>
- (c) Each Selected Assignment shall be chosen such that a band edge of the assignment coincides with an edge of the encompassing 2 GHz MSS band or is an integer multiple of 10 megahertz from an edge of the 2 GHz MSS band; and
- (d) Operations in frequencies in these bands outside the Selected Assignments shall be on a secondary basis to operations of other 2 GHz MSS systems.

67. IT IS FURTHER ORDERED that the action taken in paragraph 23 of the *TMI Authorization Order*,<sup>195</sup> as modified by the *TMI Reinstatement Order*,<sup>196</sup> IS FURTHER MODIFIED to read as follows:

\* \* \* TMI Communications and Company, Limited Partnership IS RESERVED radio-frequency spectrum to operate its proposed mobile-satellite system to provide service in the United States in the 2000-2020 MHz and 2180-2200 MHz frequency bands, in accordance with the technical specifications set forth in its Letter of Intent, as amended, and the conditions set forth in the preceding paragraphs [of the *TMI Authorization Order*] and consistent with our rules, unless specifically waived herein, and subject to the following conditions:

- (a) TMI Communications and Company shall choose a Selected Assignment in each of the 2000-2020 MHz and 2180-2200 MHz frequency bands upon commencing operation of a 2 GHz MSS satellite in its authorized orbit location;
- (b) The Selected Assignments will give TMI Communications and Company access to 10 megahertz of contiguous spectrum in each direction of transmission on a primary basis;<sup>197</sup>
- (c) Each Selected Assignment shall be chosen so that a band edge of the assignment coincides with an edge of the encompassing 2 GHz MSS band or is an integer multiple of 10 megahertz from an edge of the 2 GHz MSS band; and
- (d) Operation in frequencies in these bands outside the Selected Assignments shall be on a secondary basis to operations of other 2 GHz MSS systems.

68. IT IS FURTHER ORDERED that, consistent with Section 316 of the Communications Act, 47 U.S.C. § 316, ICO and TMI may protest this action within 30 days of the release date of this Order. Any licensee or permittee who believes its license will be modified

<sup>194</sup> This specification of additional service-link spectrum may be subject to adjustment after disposition of pending petitions for reconsideration and judicial review, and is without prejudice to resolution of further milestone issues or disposition of pending applications.

<sup>195</sup> *TMI Authorization Order*, 16 FCC Rcd at 13816 (para. 23).

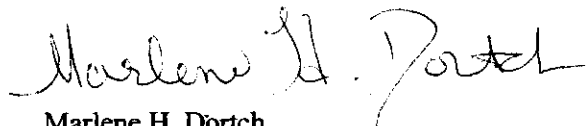
<sup>196</sup> *TMI Reinstatement Order*, 19 FCC Rcd at 12623 (para. 60).

<sup>197</sup> This specification of additional service-link spectrum may be subject to adjustment after disposition of pending petitions for reconsideration and judicial review, and is without prejudice to resolution of further milestone issues or disposition of pending applications.

by the proposed action may also protest this action within 30 days of the release date of this Order.

69. This Order is effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of the release of this Order. (See 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Marlene H. Dortch".

Marlene H. Dortch  
Secretary

## APPENDIX

## Parties Filing Pleadings

I. Letters filed Before June 29, 2005, Public Notice

1. Letter from Gregory C. Staple, Counsel for TMI, to Donald Abelson, Chief, International Bureau (dated Apr. 19, 2005) (*April 19 TMI Letter*).
2. Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel for ICO, to Donald Abelson, Chief, International Bureau (dated May 3, 2005) (*May 3 ICO Letter*).
3. Letter from Diane Cornell, CTIA, to Marlene H. Dortch, Secretary, FCC (dated May 19, 2005) (*May 19 CTIA Letter*).
4. Letter from Gregory C. Staple, Counsel for TMI, to Marlene H. Dortch, Secretary, FCC (dated May 24, 2005) (*May 24 TMI Letter*).
5. Letter from Diane Cornell, CTIA, to Marlene H. Dortch, Secretary, FCC (dated June 1, 2005) (*June 1 CTIA Letter*).
6. Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel for ICO, to Marlene Dortch, Secretary, FCC (dated June 7, 2005) (*June 7 ICO Letter*).
7. Letter from William T. Lake, Counsel to Globalstar LLP, to Marlene Dortch, Secretary, FCC (dated June 20, 2005) (*June 20 Globalstar Letter*).

II. First Comments, filed July 13, 2005

1. BRN Phoenix, Inc. (BRN Phoenix)
2. CTIA – The Wireless Association (CTIA)
3. Globalstar, LLC (Globalstar)
4. ICO Satellite Services, G.P. (ICO)
5. Inmarsat Ventures, Limited (Inmarsat)
6. Rydbeck Consulting (Rydbeck Consulting)
7. Sirius Satellite Radio (Sirius)
8. T-Mobile USA, Inc. (T-Mobile)

III. First Replies, filed July 25, 2005

1. Cingular Wireless, LLC (Cingular)
2. CTIA
3. EADS North America Defense Company (EADS)
4. ICO
5. Inmarsat
6. Intel Corporation (Intel)
7. TMI

**IV. Second Comments, Filed On or Before July 29, 2005**

1. Alcatel
2. American Petroleum Institute (API)
3. BRN Phoenix, Inc. (BRN Phoenix)
4. The Boeing Company (Boeing)
5. EADS North America Defense Company (EADS)
6. Cingular Wireless, LLC (Cingular)
7. CTIA
8. Globalstar, LLC (Globalstar)
9. Henry Ruhwiedel (Ruhwiedel)
10. Hughes Network Systems, LLC (Hughes)
11. ICO Satellite Services, G.P. (ICO)
12. Inmarsat Ventures, Limited (Inmarsat)
13. Intel Corporation (Intel)
14. Lockheed Martin Corporation (Lockheed)
15. Loral Space and Communications (Loral)
16. Microwave Circuits, Inc., (Microwave Circuits)
17. Rydbeck Consulting (Rydbeck Consulting)
18. Satellite Industry Association (SIA)
19. Society of Broadcast Engineers, Inc. (SBE)
20. Sirius Satellite Radio, Inc. (Sirius)
21. TMI and Terrestar (TMI)
22. Total RF Marketing, Inc. (Total RF)
23. United States Cellular Corporation (U.S. Cellular)

**V. Second Replies, Filed On or Before August 15, 2005**

1. Bert W. King
2. CTIA
3. Globalstar
4. Joint Reply filed by the International Association of Chiefs of Police (IACP); Major Cities Chiefs Association (MCC); National Sheriffs' Association (NSA); Major County Sheriffs' Association (MCSA) (together, Joint National Police Organizations)
5. ICO
6. Inmarsat
7. Mobile Satellite Users Association (MSUA)
8. Satellite Action Plan Regulatory Group (SAP REG) and the European Satellite Operators Association (ESOA) (together, SAP REG ESOA)
9. Sirius
10. SkyTerra Communications, Inc. (SkyTerra)
11. Sprint Nextel Corporation (Sprint)
12. TMI
13. T-Mobile USA, Inc. (T-Mobile)
14. United Telecom Council (UTC)
15. Virginia's Region 2000 Economic Development Council (Region 2000)



VI. Ex Parte Letters Filed After August 15, 2005 That Are Included in the Record

1. Letter from Kenneth L. Morckel, Director, Ohio Department of Public Safety, to Kevin Martin, Chairman, FCC (dated Sept. 16, 2005) (*September 16 Ohio Public Safety Letter*).
2. Letter from Lester B. Baird, Sr., County Administrator, Hendry County, Florida, to Kevin Martin, Chairman, FCC (dated Sept. 26, 2005) (*September 26 Hendry County Letter*).
3. Letter from Cecilia Bernier, Town Manager, Windermere, Florida, to Kevin Martin, Chairman, FCC (dated Sept. 26, 2005) (*September 26 Windermere Letter*).
4. Letter from A.M. Jacocks, Jr., Chief of Police, Virginia Beach, Virginia, to Kevin Martin, Chairman, FCC (dated Sept. 29, 2005) (*September 29 Virginia Beach Police Letter*).
5. Letter from Robert J. McCabe, Sheriff, Norfolk, Virginia, to Kevin Martin, Chairman, FCC (dated Sept. 30, 2005) (*September 30 Norfolk Police Letter*).
6. Letter from Dan Flynn, Chief of Police, Savannah-Chatham Metropolitan Police Department, Savannah, Georgia, to Kevin Martin, Chairman, FCC (dated Oct. 5, 2005) (*October 5 Savannah Police Letter*).
7. Letter from Carlton Stallings, President, Georgia Fraternal Order of Police, to Kevin Martin, Chairman, FCC (dated Oct. 15, 2005) (*October 19 Georgia Police Letter*).
8. Letter from Thomas Clemons, President, Alaska Association of Chiefs of Police, to Kevin Martin, Chairman, FCC (dated Oct. 19, 2005) (*October 19 Alaska Police Letter*).
9. Letter from Loren Leman, Aerospace States Association, to Kevin Martin, Chairman, FCC (dated Oct. 19, 2005) (*October 19 ASA Letter*).